IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

WA.No. 2880 of 2007

AGAINST THE JUDGEMENT IN WPC.10091/2007 Dated 10/09/2007
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APPELLANT/PETITIONER:

K.M.VARGHESE,
S/O.LATE K.V.MARKOSE,
AGED 60 YEARS,
KUTTIKATTIL HOUSE,
CHOOLIPADAM DESOM,
ELANADU P.O., THRISSUR DISTRICT

BY ADVS. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS/RESPONDENTS:
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1. **THE STATE OF KERALA,**
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF REVENUE,
SECRETARIAT, THIRUVANANTHAPURAM.

2. **TAHSILDAR (ASSESSING AUTHORITY)**,
TALAPPILLY TALUK.

3. **THE VILLAGE OFFICER,**
ELANAD,
THRISSUR DISTRICT.

BY SR. GOVT. PLEADER SRI. MUHAMMED RAFIQ.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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WRIT APPEAL No.2880 of 2007

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Dated this the 12th day of December, 2007.

JUDGMENT

H.L.DATTU, CJ,

Appellant is the owner of a building situate at Elanadu Village, Talappilly Taluk. He is primarily aggrieved by the demand notices issued by the second respondent, Tahsildar (Assessing Authority), Talappilly Taluk, to recover the amounts due as luxury tax under Section 5A of the Kerala Building Tax Act ('the Act' for short).

2. The learned Single Judge has rejected the writ petition. That is how, the petitioner is before us in this appeal.

3. The second respondent, Tahsilar, Talappilly Taluk, had issued a demand notice inter alia directing the petitioner to pay luxury tax under Section 5A of the Act, by his notice dated 19.9.2003. Aggrieved by the said demand notice, the petitioner had preferred an appeal before the Revenue Divisional Officer, Thrissur. The appellate authority, by its order dated 3.6.2004, has allowed the appeal and has further directed the Tahsildar, Talappilly (*sic*. Thrissur) for a fresh disposal in accordance with law in the light of the observations made by him in the course of the order.

4. After such remand, the Tahsildar, without complying with the directions issued by the First Appellate Authority, has once again issued a notice of demand dated 3.1.2006 inter alia directing the petitioner to pay luxury tax under Section 5A of the Act.

5. Learned counsel appearing for the appellant would vehemently contend before us that the Tahsildar, Talappilly Taluk, without complying with the

orders and directions issued by the appellate authority dated 3.6.2004 could not have issued the impugned notice dated 3.1.2006. Therefore, the learned counsel would submit that the learned Single Judge, without appreciating the aforesaid submission, could not have rejected the writ petition. Therefore, according to the learned counsel, the learned Judge has committed an error, which calls for interference by this court.

6. The matter is posted for admission, since the issues involved in this writ appeal lie in a narrow compass, we had directed Sri.Muhammed Rafiq, learned Government Advocate, to verify from the Tahsildar, Talappilly whether he has passed a fresh order in the light of the order passed by the First Appellate Authority dated 3.6.2004.

7. On instructions, Sri. Muhammed Rafiq would inform us that the Tahsildar, Talappilly has not passed any fresh order after affording an opportunity of hearing to the appellant as directed by the First Appellate Authority in its order dated 3.6.2004.

8. The petitioner had received a demand notice issued by the Tahsildar, Talappilly, inter alia demanding the petitioner to pay luxury tax under Section 5A of the Act. Aggrieved by the said notice, the petitioner was before the First Appellate Authority. The First Appellate Authority, being of the opinion that the said demand notice has been issued without affording an opportunity of hearing to the petitioner, had set aside the demand notice and had further directed the Tahsildar, Talappilly to pass a fresh order in accordance with law, after affording a reasonable opportunity of hearing to the petitioner. In view of the said remand order, it was expected of the Tahsildar to have passed a fresh order in accordance with law after affording an opportunity of hearing to the petitioner and then only could have issued a fresh demand notice. This is not done by the Tahsildar. In our view, without complying with the orders and directions issued by

a superior authority, in our opinion, the Tahsildar could not have issued the impugned demand notice dated 3.1.2006. In view of this lacuna, Ext.P4 demand notice issued by the Tahsildar, Talappilly requires to be set aside and the matter requires to be remanded back to the Tahsildar to pass fresh orders as directed by the First Appellate Authority in its order dated 3.6.2004. Accordingly, we make the following:

Order

i) The Writ Appeal is allowed.

ii) The order passed by the learned Single Judge is set aside.

iii) The notice of demand issued by the Tahsildar, Talappilly dated 3.1.2006 is set aside.

iv) The matter is remanded back to the Tahsildar, Talappilly Taluk to pass a fresh order in accordance with law after affording an opportunity of hearing to the petitioner as directed by the First Appellate Authority in its order dated 3.6.2004. All the other contentions of both the parties are left open.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb/DK.